

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM DURHAM, JR.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 04-297 Erie
)	
CITY AND COUNTY OF ERIE, et al.,)	
)	Electronically Filed
Defendants.)	

DEFENDANT TACKETT'S MOTION FOR SANCTIONS AGAINST PLAINTIFF

AND NOW, comes the defendant, Bruce Tackett, by his attorneys, Thomas W. Corbett, Jr., Attorney General, Kemal Alexander Mericli, Senior Deputy Attorney General, Susan J. Forney, Chief Deputy Attorney General, Chief Litigation Section, who respectfully submits the following:

1. Plaintiff refused to attend a duly noticed deposition that was scheduled by Edward Joyal, Esquire, who is counsel for the co-defendants, to occur at 10:00 a.m. on May 8, 2006, at the law offices of Knox, McLaughlin in Erie, Pennsylvania, and a relatively convenient location for plaintiff as compared to Pittsburgh.

2. Undersigned counsel expended time, effort and money on behalf of the Commonwealth of Pennsylvania to travel in a state-owned motor pool car on Sunday night to Erie to participate in the deposition on Monday morning not having gotten-the message left at 4:45 p.m. on Friday, May 5th by Mr. Joyal that it had only just been cancelled because of plaintiff's refusal to attend. (Receipted expenses for motel room and gas alone exceed \$92.00

for the trip.) No valid excuse or justification for the refusal was apparently provided to Mr. Joyal, and it is believed none was offered by plaintiff.

3. Discovery ends May 10th with plaintiff's pretrial statement due the 19th.

4. This defendant respectfully requests that plaintiff's "eleventh hour" refusal to attend the deposition in the absence of justification or excuse be sanctioned by prohibiting him from introducing any evidence, in the form of his own sworn statements (made by affidavit or otherwise) in support of those allegations of his complaint that pertain to defendant Tackett so that he is therefore precluded from making a counter-affidavit to any extent it is composed of such statements, in an effort to create a material dispute of fact in the event that defendant Tackett makes a duly supported motion for summary judgment in this case.

WHEREFORE, it is respectfully requested that this motion be granted.

Respectfully submitted,

THOMAS W. CORBETT, JR.
Attorney General

By: s/Kemal Alexander Mericli
Kemal Alexander Mericli
Senior Deputy Attorney General
Attorney I.D. No. 27703

Susan J. Forney
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
6th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Date: May 10, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Defendant Tackett's Motion for Sanctions Against Plaintiff was served upon the following via electronic and/or first-class mail on May 10, 2006.

Warren Durham, Jr.
12119 Matherson Avenue
Cleveland, OH 44135

Edmond R. Joyal, Jr., Esquire
Law Office of Joseph S. Weimer
975 Two Chatham Center
Pittsburgh, PA 15219

Mark E. Mioduszewski, Esquire
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s/Kemal Alexander Mericli
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Date: May 10, 2006